Resilient Floor Decorators Local Union No. 2265, United Brotherhood of Carpenters and Joiners of America, AFL–CIO *and* Detroit Floor Company and Tile, Marble and Terrazzo Local No. 32, affiliated with the International Union of Bricklayers and Allied Craftsmen, AFL–CIO. Case 7–CD–524

April 14, 1994

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

The charge in this Section 10(k) proceeding was filed September 27, 1993, by Detroit Floor Company, the Employer, alleging that the Respondent, Resilient Floor Decorators Local Union No. 2265, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (Carpenters Local 2265), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to employees represented by Tile, Marble and Terrazzo Local No. 32, affiliated with the International Union of Bricklayers and Allied Craftsmen, AFL–CIO (Bricklayers Local 32). The hearing was held on October 19, 1993, before Hearing Officer Mary Strang. Thereafter, the Employer, Carpenters Local 2265, and Bricklayers Local 32 filed briefs.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer is a Michigan corporation with an office and place of business in Livonia, Michigan, where it is engaged in the business of installing floor coverings. During the 12-month period ending August 31, 1993, the Employer, in the course and conduct of its business, purchased goods and materials valued in excess of $50,000 from points located outside the State of Michigan and caused said goods to be shipped directly to its Michigan facility. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Carpenters Local 2265 and Bricklayers Local 32 are labor organizations within the meaning of Section 2(5) of the Act.

II. DISPUTE

A. *Background and Facts of Dispute*

The Employer installs several types of flooring material, including ceramic tile. The Employer bids its jobs on a ''package'' basis, giving its customers one price for the various types of flooring materials to be furnished and installed on the job. The Employer rarely installs only one type of floor covering on a job. On a typical job the same employees are responsible for installing all the floor coverings.

The Employer has 12 to 15 full-time regular employees working as installers. The Employer voluntarily recognized Carpenters Local 2265 after a majority of its installers demonstrated their desire to be represented by the Union. These parties have had a collective-bargaining relationship for the last 6 to 7 years. The Employer is a signatory to a 1992–993 and 1993–994 Industry Agreement between Carpenters Local 2265 and the Floor Covering Industry Association, which includes, inter alia, jurisdiction over ceramic tile work.

The Employer performs one to two floor installation jobs, including ceramic tile, per week, and has always, with one exception, assigned the work to employees represented by Carpenters Local 2265. This exception occurred in September 1992 when employees represented by Bricklayers Local 32 installed marble for the Employer at a large shopping mall project. Presently, the Employer is a signatory to a 1992–1995 Industry Agreement with Bricklayers Local 32, which includes jurisdiction over ceramic tile work.

In August 1993, the Employer assigned the ceramic tile work at the Cellular One job located at 28117 Telegraph Road, Southfield, Michigan, to employees represented by Carpenters Local 2265. In August 1993, Bricklayers Local 32 Assistant Business Manager John Mason visited the general contractor for the Cellular One job and inquired about the identity of the company scheduled to install the ceramic tile at the Cellular One job location. The general contractor's representative, Gary Ness, told Mason that the work was being assigned to the Detroit Floor Company. Mason then told Ness that there ''would be a problem'' if the Detroit Floor Company did not assign the ceramic tile installation work to Bricklayers Local 32-represented employees.

On September 22, 1993, after learning that Bricklayers Local 32 was raising questions about the Cellular One job assignment, Carpenters Local 2265 wrote the Employer a letter and threatened it with ''whatever action it deems necessary, including a job shutdown, to enforce its work jurisdiction claims.''

B. *Work in Dispute*

The work in dispute is the installation of ceramic tile by Detroit Floor Company at the Cellular One job located at 28117 Telegraph Road, Southfield, Michigan.

C. *Contentions of the Parties*

The Employer contends that there is reasonable cause to believe Carpenters Local 2265 violated Section 8(b)(4)(D) and that the proceeding is properly before the Board for determination of the dispute. The Employer has expressed its preference that the Board award the disputed work to its employees represented by Carpenters Local 2265. The Employer further contends that the factors of relative skills, history of collective bargaining, economy and efficiency of operations, past practice, and area and industry practice favor an award of the disputed work to these employees.

Carpenters Local 2265 takes the position that the factors of relative skills, economy and efficiency of the operation, and employer past practice and preference favor an award of the disputed work to employees represented by it. It further contends that the language of its collective-bargaining agreement with the Employer favors an award of this work to employees it represents.

Bricklayers Local 32 contends that the language in its collective-bargaining agreement, economy and efficiency of operations, and area and industry practice favor the award of the disputed work to employees it represents.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As set forth above, upon learning that Bricklayers Local 32 had questioned the assignment of ceramic tile work at the Cellular One job to employees represented by Carpenters Local 2256, the latter sent a letter threatening the Employer that if it reconsidered this work assignment, Carpenters Local 2256 would take ''whatever action it deems necessary, including a job shutdown, to enforce its work jurisdiction claims.''

We find that the foregoing facts establish reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and, as there is no claim that an agreed-upon method of voluntary adjustment exists, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

Neither of the Unions has been shown to have been certified by the Board as the collective-bargaining representative of the Employer's employees.

As noted above, the Employer is party to current collective-bargaining agreements with both Carpenters Local 2265 and Bricklayers Local 32. Each of the collective-bargaining agreements arguably cover the work in dispute. Accordingly, we find the factor of collective-bargaining agreements does not favor an award of work to employees represented by either Union.

2. Employer past practice and preference

As noted above, for the past several years, with one exception, the Employer has assigned all of its floor installation work to its own employees, who are represented by Carpenters Local 2265.

The Employer has assigned the work in dispute to employees represented by Carpenters Local 2265. The Employer has stated its preference that the installation of ceramic tile at the Cellular One job be performed by these employees. Accordingly, we find that the factors of employer past practice, assignment, and preference favor the award of the disputed work to employees represented by Carpenters Local 2265.

3. Area and industry practice

There appear to be some employers in the Detroit area who utilize employees represented by Bricklayers Local 32 to install ceramic tile. There are also a number of employers who install ceramic tile using employees represented by Carpenters Local 2265. Accordingly, we find the evidence inconclusive to establish an area or industry practice in favor of either group of employees.

4. Relative skills

The record shows that the Employer trained its employees represented by Carpenters Local 2265 in all phases of flooring installation, including ceramic tile work. Bricklayers Local 32 tilesetters participate in a training program run by the Union, which, inter alia,

includes on-the-job training. Accordingly, the factor of relative skills does not favor an award of the work to employees represented by either Union.

5. Economy and efficiency of operations

The Employer's work generally consists of package jobs in which its employees install multiple types of floor coverings. The Employer assigns only one crew to a given job and this crew is responsible for installing the various floor coverings ordered by the customers, including carpet, vinyl tile, wood flooring, and ceramic tile. The Employer presented testimony that it is more efficient and cost effective to have its workers cross-trained in the various types of flooring installations, to assign them to do all the installations on a given job, and to use a single crew to perform both ceramic tile work and other floor covering work. Carpenters Local 2265-represented employees are qualified to install all the various floor coverings used by the Employer on its jobs. Employees represented by Bricklayers Local 32 do not have the skills to install carpet or vinyl tile. Accordingly, we find that the factor of economy and efficiency of operations favors an award of the disputed work to employees represented by Carpenters Local 2265.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Carpenters Local 2265 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of Employer past practice and preference, and efficiency and economy of operations. In making this determination, we are awarding the work to employees represented by Carpenters Local 2265, not to that Union or its members.

Scope of the Award

The Employer contends that the determination should encompass work at all the Employer's jobsites in the Detroit metropolitan area. The Board has customarily declined to grant an areawide award in cases such as this in which the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. See *Laborers (Paul H. Schwendener, Inc.)*, 304 NLRB 623, 625 (1991). Accordingly, in the circumstances of this case we find a broad award is unwarranted. Therefore, the present determination is limited to the particular controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Detroit Floor Company, represented by Resilient Floor Decorators Local Union No. 2265, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, are entitled to perform the work of installing ceramic tile at the Employer's Cellular One job located at 28117 Telegraph Road, Southfield, Michigan.